

Article 2.

Commissioner of Insurance.

§ 58-2-1. Department established.

The Department is hereby established as a separate and distinct department, which is charged with the execution of laws relating to insurance and other subjects placed under the Department. (1899, c. 54, s. 3; 1901, c. 391, s. 1; Rev., s. 4680; C.S., s. 6263; 1991, c. 720, s. 5.)

§ 58-2-5. Commissioner's election and term of office.

The chief officer of the Insurance Department shall be called the Commissioner of Insurance; whenever in the statutes of this State the words "Insurance Commissioner" appear, they shall be deemed to refer to and to be synonymous with the term "Commissioner of Insurance." He shall be elected by the people in the manner prescribed for the election of members of the General Assembly and State officers, and the result of the election shall be declared in the same manner and at the same time as the election of State officers is now declared. His term of office begins on the first day of January next after his election, and is for four years or until his successor is elected and qualified. If a vacancy occurs during the term, it shall be filled by the Governor for the unexpired term. (Rev., ss. 4680, 4681; 1907, c. 868; C.S., s. 6264; 1943, c. 170.)

§ 58-2-10. Salary of Commissioner.

The salary of the Commissioner shall be set by the General Assembly in the Current Operations Appropriations Act. In addition to the salary set by the General Assembly in the Current Operations Appropriations Act, longevity pay shall be paid on the same basis as is provided to employees of the State who are subject to the North Carolina Human Resources Act. (1899, c. 54, ss. 3, 8; 1901, c. 710; 1903, c. 42; c. 771, s. 3; Rev., s. 2756; 1907, c. 830, s. 10; c. 994; 1909, c. 839; 1913, c. 194; 1915, cc. 158, 171; 1917, c. 70; 1919, c. 247, s. 4; C.S., s. 3874; 1921, c. 25, s. 1; 1933, c. 282, s. 5; 1935, c. 293; 1937, c. 342; 1945, c. 383; 1947, c. 1041; 1949, c. 1278; 1953, c. 1, s. 2; 1957, c. 1; 1963, c. 1178, s. 6; 1967, c. 1130; c. 1237, s. 6; 1969, c. 1214, s. 6; 1971, c. 912, s. 6; 1973, c. 778, s. 6; 1975, 2nd Sess., c. 983, s. 21; 1977, c. 802, s. 42.12; 1983, c. 761, s. 206; 1983 (Reg. Sess., 1984), c. 1034, s. 164; 1987, c. 738, s. 32(b); 1991, c. 720, s. 4; 2013-382, s. 9.1(c).)

§ 58-2-15. Chief deputy commissioner.

The Commissioner shall appoint and may remove at his discretion a chief deputy commissioner, who, in the event of the absence, death, resignation, disability or disqualification of the Commissioner, or in case the office of Commissioner shall for any reason become vacant, shall have and exercise all the powers and duties vested by law in the Commissioner. He shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1987, c. 864, s. 19(a).)

§ 58-2-20. Chief actuary.

The Commissioner shall appoint and may remove at his discretion a chief actuary, who shall receive such compensation as fixed and provided by the Department of Administration. (1945, c. 383; 1987, c. 864, s. 19(b).)

§ 58-2-25. Other deputies, actuaries, examiners and employees.

(a) The Commissioner shall appoint or employ such other deputies, actuaries, economists, financial analysts, financial examiners, licensed attorneys, rate and policy analysts, accountants, fire and rescue training instructors, market conduct analysts, insurance complaint analysts, investigators, engineers, building inspectors, risk managers, clerks and other employees that the Commissioner considers to be necessary for the proper execution of the work of the Department, at the compensation that is fixed and provided by the Department of Administration. If the Commissioner considers it to be necessary for the proper execution of the work of the Department to contract with persons, except to fill authorized employee positions, all of those contracts, except those provided for in Articles 36 and 37 and Part 2 of Article 44 of this Chapter, shall be made pursuant to the provisions of Article 3C of Chapter 143 of the General Statutes.

Whenever the Commissioner or any deputy or employee of the Department is requested or subpoenaed to testify as an expert witness in any civil or administrative action, the party making the request or filing the subpoena and on whose behalf the testimony is given shall, upon receiving a statement of the cost from the Commissioner, reimburse the Department for the actual time and expenses incurred by the Department in connection with the testimony.

(b) The minimum education requirements for financial analysts and examiners referred to in subsection (a) of this section are a bachelors degree, with the appropriate courses in accounting as defined in 21 NCAC 8A.0309, and other courses that are required to qualify the applicant as a candidate for the uniform certified public accountant examination, based on the examination requirements in effect at the time of graduation by the analyst or examiner from an accredited college or university. (1945, c. 383; 1981, c. 859, s. 94; 1987, c. 864, s. 20; 1989 (Reg. Sess., 1990), c. 1069, s. 20; 1991, c. 681, s. 1; 2000-122, s. 4; 2006-145, s. 4.)

§ 58-2-30. Appointments of committees or councils.

(a) As used in this section, the term "committee" means a collective body that consults with and advises the Commissioner or his designee in detailed technical areas; and the term "council" means a collective body that consults with and advises the Commissioner or his designee as representative of citizen advice in specific areas of interest.

(b) The Commissioner may create and appoint committees and councils, each of which shall consist of no more than 13 members unless otherwise provided by law. The members of any committee or council shall serve at the pleasure of the Commissioner and may be paid per diem and necessary travel and subsistence expenses within the limits of appropriations and in accordance with G.S. 138-5. Per diem, travel, and subsistence payments to members of committees or councils that are created in connection with federal programs shall be paid from federal funds unless otherwise provided by law. (1985, c. 666, s. 44.)

§ 58-2-31. Seniors' Health Insurance Information Program.

The Seniors' Health Insurance Information Program is established within the Department as a statewide health benefits counseling program to provide the State's Medicare beneficiaries with counseling in Medicare, Medicare supplement insurance, long-term care insurance, and related health care coverage plans. (2011-196, s. 2.)

§ 58-2-35. Seal of Department.

The Commissioner, with the approval of the Governor, shall devise a seal, with suitable inscription, for his office, a description of which, with the certificate of approval by the Governor, shall be filed in the office of the Secretary of State, with an impression thereof, which seal shall

thereupon become the seal of office of the Commissioner of the Department. The seal may be renewed whenever necessary. (1899, c. 54, s. 11; Rev., s. 4682; C.S., s. 6266; 1991, c. 720, ss. 4, 5.)

§ 58-2-40. Powers and duties of Commissioner.

The Commissioner shall:

- (1) See that all laws of this State that the Commissioner is responsible for administering and the provisions of this Chapter are faithfully executed; and to that end the Commissioner is authorized to adopt rules in accordance with Chapter 150B of the General Statutes, in order to enforce, carry out and make effective the provisions of those laws. The Commissioner is also authorized to adopt such further rules not contrary to those laws that will prevent persons subject to the Commissioner's regulatory authority from engaging in practices injurious to the public.
- (1a) Have the power and authority to fix and collect reasonable fees for services performed by Code-enforcement officials under G.S. 143-151.12(9)a. The Commissioner may also collect reimbursement, at the rate established under G.S. 138-6, for mileage costs incurred by Code-enforcement officials going to and from inspections conducted under G.S. 143-151.12(9)a. The Commissioner shall have no power or authority to fix or collect fees incurred by local inspection departments under G.S. 143-151.12(9)b.
- (2) Have the power and authority to adopt rules pertaining to and governing the solicitation of proxies, including financial reporting in connection therewith, with respect to the capital stock or other equity securities of any domestic stock insurance company.
- (3) Prescribe to the companies, associations, orders, or bureaus required by Articles 1 through 64 of this Chapter to report to the Commissioner, the necessary forms for the statements required. The Commissioner may change those forms from time to time when necessary to secure full information as to the standing, condition, and such other information desired of companies, associations, orders, or bureaus under the jurisdiction of the Department.
- (4) Receive and thoroughly examine each financial statement required by Articles 1 through 64 of this Chapter.
- (5) Report in detail to the Attorney General any violations of the laws relative to insurance companies, associations, orders and bureaus or the business of insurance; and the Commissioner may institute civil actions or criminal prosecutions either by the Attorney General or another attorney whom the Attorney General may select, for any violation of the provisions of Articles 1 through 64 of this Chapter.
- (6) Upon a proper application by any citizen of this State, give a statement or synopsis of the provisions of any insurance contract offered or issued to the citizen.
- (7) Administer, or the Commissioner's deputy may administer, all oaths required in the discharge of the Commissioner's official duty.
- (8) Compile and make available to the public such lists of rates charged, including deviations, and such explanations of coverages that are provided by insurers for

and in connection with contracts or policies of (i) insurance against loss to residential real property with not more than four housing units located in this State and any contents thereof or valuable interest therein and other insurance coverages written in connection with the sale of such property insurance and (ii) private passenger (nonfleet) motor vehicle liability, physical damage, theft, medical payments, uninsured motorists, and other insurance coverages written in connection with the sale of such insurance, as may be advisable to inform the public of insurance premium differentials and of the nature and types of coverages provided. The explanations of coverages provided for in this section must comply with the provisions of Article 38 of this Chapter.

- (9) Repealed by Session Laws 2000, ch. 19, s. 3, effective on or after April 1, 1998.
- (10) Repealed by Session Laws 2013-5, s. 1(b), effective March 6, 2013. (1899, c. 54, s. 8; 1905, c. 430, s. 3; Rev., s. 4689; C.S., s. 6269; 1945, c. 383; 1947, c. 721; 1965, c. 127, s. 1; 1971, c. 757, s. 1; 1977, c. 376, s. 1; 1979, c. 755, s. 19; c. 881, s. 1; 1981, c. 846, s. 2; 1989, c. 485, s. 29; 1991, c. 644, s. 26; 1997-392, s. 3; 2000-19, s. 3; 2010-31, s. 24.2(a); 2013-5, s. 1(b); 2018-29, s. 2(d).)

§ 58-2-45. Orders of Commissioner; when writing required.

Whenever by any provision of Articles 1 through 64 of this Chapter, the Commissioner is authorized to grant any approval, authorization or permission or to make any other order affecting any insurer, insurance agent, insurance broker or other person or persons subject to the provisions of Articles 1 through 64 of this Chapter, such order shall not be effective unless made in writing and signed by the Commissioner or by his authority. (1945, c. 383.)

§ 58-2-46. State of disaster automatic stay of proof of loss requirements; premium and debt deferrals; loss adjustments for separate windstorm policies.

Whenever (i) a state of disaster is proclaimed for the State or for an area within the State under G.S. 166A-19.21 or whenever the President of the United States has issued a major disaster declaration for the State or for an area within the State under the Stafford Act, 42 U.S.C. § 5121, et seq., as amended and (ii) if the Commissioner has issued an order declaring subdivisions (1) through (4) of this section effective for the specific disaster:

- (1) The application of any provision in an insurance policy insuring real property and its contents that are located within the geographic area designated in the proclamation or declaration, which provision requires an insured to file a proof of loss within a certain period of time after the occurrence of the loss, shall be stayed for the time period not exceeding the earlier of (i) the expiration of the disaster proclamation or declaration and all renewals of the proclamation or (ii) the expiration of the Commissioner's order declaring subdivisions (1) through (4) of this section effective for the specific disaster, as determined by the Commissioner.
- (2) As used in this subdivision, "insurance company" includes a service corporation, HMO, MEWA, surplus lines insurer, and the underwriting associations under Articles 45 and 46 of this Chapter. All insurance companies, premium finance companies, collection agencies, and other persons subject to

this Chapter shall give their customers who reside within the geographic area designated in the proclamation or declaration the option of deferring premium or debt payments that are due during the earlier of (i) [the time period covered by the proclamation or declaration or (ii)] the time period prior to the expiration of the Commissioner's order declaring subdivisions (1) through (4) of this section effective for the specific disaster, as determined by the Commissioner. This deferral period shall be 30 days from the last day the premium or debt payment may be made under the terms of the policy or contract. This deferral period shall also apply to any statute, rule, or other policy or contract provision that imposes a time limit on an insurer, insured, claimant, or customer to perform any act during the time period covered by the proclamation or declaration, including the transmittal of information, with respect to insurance policies or contracts, premium finance agreements, or debt instruments when the insurer, insured, claimant, or customer resides or is located in the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. Likewise, the deferral period shall apply to any time limitations imposed on insurers under the terms of a policy or contract or provisions of law related to individuals who reside within the geographic area designated in the proclamation or declaration. The Commissioner may extend any deferral period in this subdivision, depending on the nature and severity of the proclaimed or declared disaster. No additional rate or contract filing shall be necessary to effect any deferral period.

- (3) With respect to health benefit plans, after a deferral period has expired, all premiums in arrears shall be payable to the insurer. If premiums in arrears are not paid, coverage shall lapse as of the date premiums were paid up, and preexisting conditions shall apply as permitted under this Chapter; and the insured shall be responsible for all medical expenses incurred since the effective date of the lapse in coverage.
- (4) Repealed by Session Laws 2014-115, s. 39.2, effective August 11, 2014. (2006-145, s. 3; 2012-12, s. 2(i); 2013-199, s. 22(a); 2014-115, s. 39.2.)

§ 58-2-47. Incident affecting operations of the Department; stay of deadlines and deemer provisions.

Regardless of whether a state of emergency or disaster has been proclaimed under G.S. 166A-19.20 or G.S. 166A-19.21 or declared under the Stafford Act, whenever an incident beyond the Department's reasonable control, including an act of God, insurrection, strike, fire, power outage, or systematic technological failure, substantially affects the daily business operations of the Department, the Commissioner may issue an order, effective immediately, to stay the application of any deadlines and deemer provisions imposed by law or rule upon the Commissioner or Department or upon persons subject to the Commissioner's jurisdiction, which deadlines and deemer provisions would otherwise operate during the time period for which the operations of the Department have been substantially affected. The order shall remain in effect for a period not exceeding 30 days.

The order may be renewed by the Commissioner for successive periods not exceeding 30 days each for as long as the operations of the Department remain substantially affected, up to a period of one year from the effective date of the initial order. (2006-145, s. 3; 2012-12, s. 2(j); 2013-199, s. 22(b).)

§ 58-2-50. Examinations, hearings, and investigations.

All examinations, hearings, and investigations provided for by this Chapter may be conducted by the Commissioner personally or by one or more deputies, investigators, actuaries, examiners or employees designated for the purpose. If the Commissioner or any investigator appointed to conduct the investigations is of the opinion that there is evidence to charge any person or persons with a criminal violation of any provision of this Chapter, the Commissioner may arrest with warrant or cause the person or persons to be arrested. All hearings shall, unless otherwise specially provided, be held in accordance with this Article and Article 3A of Chapter 150B of the General Statutes and at a time and place designated in a written notice given by the Commissioner to the person cited to appear. The notice shall state the subject of inquiry and the specific charges, if any. (1945, c. 383; 1969, c. 1009; 1995, c. 193, s. 6; 1999-219, s. 1.1.)

§ 58-2-52. Appeals and rate-making hearings before the Commissioner.

(a) The Commissioner may adopt rules for the hearing of appeals by the Commissioner or the Commissioner's designated hearing officer under G.S. 58-36-35, 58-37-65, 58-45-50, 58-46-30, 58-48-40(c)(7), 58-48-42, and 58-62-51(c). These rules may provide for prefiled evidence and testimony of the parties, prehearing statements and conferences, settlement conferences, discovery, subpoenas, sanctions, motions, intervention, consolidation of cases, continuances, rights and responsibilities of parties, witnesses, and evidence.

(b) Notwithstanding G.S. 150B-38(h), hearing procedures for rate filings made by the North Carolina Rate Bureau shall be governed by the provisions of Article 36 of this Chapter and G.S. 150B-39 through G.S. 150B-41. The Commissioner may adopt rules for those hearings.

(c) Appeals under the statutes cited in subsection (a) of this section are not contested cases within the meaning of G.S. 150B-2(2). (1993, c. 409, s. 23; 1995, c. 193, s. 7.)

§ 58-2-53. Filing approvals and disapprovals; clarification of law.

Whenever any provision of this Chapter requires a person to file rates, forms, classification plans, rating plans, plans of operation, the Safe Driver Incentive Plan, or any other item with the Commissioner or Department for approval, the approval or disapproval of the filing is an agency decision under Chapter 150B of the General Statutes only with respect to the person making the filing or any person that intervenes in the filing. (2001-423, s. 2.)

§ 58-2-55. Designated hearing officers.

In any contested case under this Chapter or Article 9A or Article 9B of Chapter 143 of the General Statutes, the Commissioner may designate a member of his staff to serve as a hearing officer. When the Commissioner is unable or elects not to hear a contested case and elects not to designate a hearing officer to hear a contested case, he shall apply to the director of the Office of Administrative Hearings for the designation of an administrative law judge to preside at the hearing of a contested case. Upon receipt of the application, the Director shall, without undue delay, assign an administrative law judge to hear the case. (1989, c. 485, s. 30; 1999-393, s. 4.)

§ 58-2-60. Restraining orders; criminal convictions.

(a) Whenever it appears to the Commissioner that any person has violated, is violating, or threatens to violate any provision of Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter, or Article 9A of Chapter 143 of the General Statutes, he may apply to the superior court of any county in which the violation has occurred, is occurring, or may occur for a restraining order and injunction to restrain such violation. If upon application the court finds that any provision of said statutes has been violated, is being violated, or a violation thereof is threatened, the court shall issue an order restraining and enjoining such violations; and such relief may be granted regardless of whether criminal prosecution is instituted under any provision of law.

(b) The conviction in any court of competent jurisdiction of any licensee for any criminal violation of the statutes referred to in subsection (a) of this section automatically has the effect of suspending the license of that person until such time that the license is reinstated by the Commissioner. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, and a plea of nolo contendere. (1989, c. 485, s. 30.)

§ 58-2-65. License surrenders.

This section applies to persons or entities licensed under Articles 1 through 64, 65 and 66, 67, 69, 70, or 71 of this Chapter, or Article 9A of Chapter 143 of the General Statutes. When a licensee is accused of any act, omission, or misconduct that would subject the license to suspension or revocation, the licensee, with the consent and approval of the Commissioner, may surrender the license for a period of time established by the Commissioner. A person or entity who surrenders a license shall not thereafter be eligible for or submit any application for licensure during the period of license surrender. (1989, c. 485, s. 30.)

§ 58-2-69. Notification of criminal convictions and changes of address; service of notice; contracts for online services, administrative services, or regulatory data systems.

(a) As used in this section:

- (1) "License" includes any license, certificate, registration, or permit issued under this Chapter.
- (2) "Licensee" means any person who holds a license.

(b) Every applicant for a license shall inform the Commissioner of the applicant's residential address and provide the applicant's e-mail address to which the Commissioner can send electronic notifications and other messages. Every licensee shall give written notification to the Commissioner of any change of the licensee's residential or e-mail address within 10 business days after the licensee moves into the licensee's new residence or obtains a different e-mail address. This requirement applies if the change of residential address is by governmental action and there has been no actual change of residence location; in which case the licensee shall notify the Commissioner within 10 business days after the effective date of the change. A violation of this subsection is not a ground for revocation, suspension, or nonrenewal of the license or for the imposition of any other penalty by the Commissioner, though a licensee who violates this subsection shall pay an administrative fee of fifty dollars (\$50.00) to the Commissioner.

(c) If a licensee is convicted in any court of competent jurisdiction for any crime or offense other than a motor vehicle infraction, the licensee shall notify the Commissioner

in writing of the conviction within 10 days after the date of the conviction. As used in this subsection, "conviction" includes an adjudication of guilt, a plea of guilty, or a plea of nolo contendere.

(d) Notwithstanding any other provision of law, whenever the Commissioner is authorized or required to give any notice under this Chapter to a licensee, the notice may be given personally or by sending the notice by first-class mail to the licensee at the address that the licensee has provided to the Commissioner under subsection (b) of this section.

(e) The giving of notice by mail under subsection (d) of this section is complete upon the expiration of four days after the deposit of the notice in the post office. Proof of the giving of notice by mail may be made by the certificate of any employee of the Department.

(f) Notification by licensees under subsection (b) of this section may be accomplished by submitting written notification directly to the Commissioner or by using any online services approved by the Commissioner for this purpose.

(g) The Commissioner may contract with the NAIC or other persons for the provision of online services to applicants and licensees, for the provision of administrative services, for the provision of license processing and support services, and for the provision of regulatory data systems to the Commissioner. The NAIC or other person with whom the Commissioner contracts may charge applicants and licensees a reasonable fee for the provision of online services, the provision of administrative services, the provision of license processing and support services, and the provision of regulatory data systems to the Commissioner. The fee shall be agreed to by the Commissioner and the other contracting party and shall be stated in the contract. The fee is in addition to any applicable license application and renewal fees. Contracts for the provision of online services, contracts for the provision of administrative services, and contracts for the provision of regulatory data systems shall not be subject to Article 3, 3C, or 8 of Chapter 143 of the General Statutes or to Article 15 of Chapter 143B of the General Statutes. However, the Commissioner shall: (i) submit all proposed contracts for supplies, materials, printing, equipment, and contractual services that exceed one million dollars (\$1,000,000) authorized by this subsection to the Attorney General or the Attorney General's designee for review as provided in G.S. 114-8.3; and (ii) include in all contracts to be awarded by the Commissioner under this subsection a standard clause which provides that the State Auditor and internal auditors of the Commissioner may audit the records of the contractor during and after the term of the agreement or contract to verify accounts and data affecting fees and performance. The Commissioner shall not award a cost plus percentage of cost agreement or contract for any purpose. (1998-211, s. 16; 2007-507, s. 15; 2009-566, s. 20; 2010-194, s. 6; 2011-196, s. 1; 2011-326, s. 15(f); 2015-241, s. 7A.4(d).)

§ 58-2-70. Civil penalties or restitution for violations; administrative procedure.

(a) This section applies to any person who is subject to licensure or certification under this Chapter.

(b) Whenever the Commissioner has reason to believe that any person has violated any of the provisions of this Chapter, and the violation subjects the license or certification of that person

to suspension or revocation, the Commissioner may, after notice and opportunity for a hearing, proceed under the appropriate subsections of this section.

(c) If, under subsection (b) of this section, the Commissioner finds a violation of this Chapter, the Commissioner may, in addition to or instead of suspending or revoking the license or certification, order the payment of a monetary penalty as provided in subsection (d) of this section or petition the Superior Court of Wake County for an order directing payment of restitution as provided in subsection (e) of this section, or both. Each day during which a violation occurs constitutes a separate violation.

(d) If the Commissioner orders the payment of a monetary penalty pursuant to subsection (c) of this section, the penalty shall not be less than one hundred dollars (\$100.00) nor more than one thousand dollars (\$1,000). In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation, the amount of money that inured to the benefit of the violator as a result of the violation, whether the violation was committed willfully, and the prior record of the violator in complying or failing to comply with laws, rules, or orders applicable to the violator. The clear proceeds of the penalty shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2. Payment of the civil penalty under this section shall be in addition to payment of any other penalty for a violation of the criminal laws of this State.

(e) Upon petition of the Commissioner the court may order the person who committed a violation specified in subsection (c) of this section to make restitution in an amount that would make whole any person harmed by the violation. The petition may be made at any time and also in any appeal of the Commissioner's order.

(f) Restitution to any State agency for extraordinary administrative expenses incurred in the investigation and hearing of the violation may also be ordered by the court in such amount that would reimburse the agency for the expenses.

(g) Nothing in this section prevents the Commissioner from negotiating a mutually acceptable agreement with any person as to the status of the person's license or certificate or as to any civil penalty or restitution.

(h) Unless otherwise specifically provided for, all administrative proceedings under this Chapter are governed by Chapter 150B of the General Statutes. Appeals of the Commissioner's orders under this section shall be governed by G.S. 58-2-75. (1985, c. 666, s. 35; 1987, c. 752, ss. 3-5; c. 864, s. 1; 1989, c. 485, s. 46; 1998-211, s. 15; 1998-215, s. 83(a).)

§ 58-2-75. Court review of orders and decisions.

(a) Any order or decision made, issued or executed by the Commissioner, except an order to make good an impairment of capital or surplus or a deficiency in the amount of admitted assets and except an order or decision that the premium rates charged or filed on all or any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are otherwise not in the public interest or that a classification assignment is unwarranted, unreasonable, improper, unfairly discriminatory, or not in the public interest, shall be subject to review in the Superior Court of Wake County on petition by any person aggrieved filed within 30 days from the date of the delivery of a copy of the order or decision made by the Commissioner upon such person. A copy of such petition for review as filed with and certified to by the clerk of said court shall be served upon the Commissioner or in his absence upon someone in active charge of the Department within five days after the filing thereof. If such petition for review is not filed within the said 30 days, the parties aggrieved shall be deemed to have waived the right to have the merits of the order or decision

reviewed and there shall be no trial of the merits thereof by any court to which application may be made by petition or otherwise, to enforce or restrain the enforcement of the same.

(b) The Commissioner shall within 30 days, unless the time be extended by order of court, after the service of the copy of the petition for review as provided in subsection (a) of this section, prepare and file with the clerk of the Superior Court of Wake County a complete transcript of the record of the hearing, if any, had before him, and a true copy of the order or decision duly certified. The order or decision of the Commissioner if supported by substantial evidence shall be presumed to be correct and proper. The court may change the place of hearing,

- (1) Upon consent of the parties; or
- (2) When the convenience of witnesses and the ends of justice would be promoted by the change; or
- (3) When the judge has at any time been interested as a party or counsel.

The cause shall be heard by the trial judge as a civil case upon transcript of the record for review of findings of fact and errors of law only. It shall be the duty of the trial judge to hear and determine such petition with all convenient speed and to this end the cause shall be placed on the calendar for the next succeeding term for hearing ahead of all other cases except those already given priority by law. If on the hearing before the trial judge it shall appear that the record filed by the Commissioner is incomplete, he may by appropriate order direct the Commissioner to certify any or all parts of the record so omitted.

(c) The trial judge shall have jurisdiction to affirm or to set aside the order or decision of the Commissioner and to restrain the enforcement thereof.

(d) Appeals from all final orders and judgments entered by the superior court in reviewing the orders and decisions of the Commissioner may be taken to the appellate division of the General Court of Justice by any party to the action as in other civil cases.

(e) The commencement of proceedings under this section shall not operate as a stay of the Commissioner's order or decision, unless otherwise ordered by the court. (1945, c. 383; 1947, c. 721; 1969, c. 44, s. 55; 1971, c. 703, s. 1.)

§ 58-2-80. Court review of rates and classification.

Any order or decision of the Commissioner that the premium rates charged or filed on all or any class of risks are excessive, inadequate, unreasonable, unfairly discriminatory or are otherwise not in the public interest or that a classification or classification assignment is unwarranted, unreasonable, improper, unfairly discriminatory or not in the public interest may be appealed to the North Carolina Court of Appeals by any party aggrieved thereby. Any such order shall be based on findings of fact, and if applicable, findings as to trends related to the matter under investigation, and conclusions of law based thereon. Any order or decision of the Commissioner, if supported by substantial evidence, shall be presumed to be correct and proper. For the purposes of the appeal the Insurance Commissioner, who shall be represented by his general counsel, shall be deemed an aggrieved party. (1971, c. 703, s. 2.)

§ 58-2-85. Procedure on appeal under § 58-2-80.

Appeals to the North Carolina Court of Appeals pursuant to G.S. 58-2-80 shall be subject to the following provisions:

- (1) No party to a proceeding before the Commissioner may appeal from any final order or decision of the Commissioner unless within 30 days after the entry of such final order or decision, or within such time thereafter as may be fixed by

- the Commissioner, by order made within 30 days, the party aggrieved by such decision or order shall file with the Commissioner notice of appeal.
- (2) Any party may appeal from all or any portion of any final order or decision of the Commissioner in the manner herein provided. Copy of the notice of appeal shall be mailed by the appealing party at the time of filing with the Commissioner, to each party to the proceeding to the addresses as they appear in the files of the Commissioner in the proceeding. The failure of any party, other than the Commissioner, to be served with or to receive a copy of the notice of appeal shall not affect the validity or regularity of the appeal.
 - (3) Repealed by Session Laws 2009-566, s. 26, effective October 1, 2009, and applicable to appeals filed on or after that date.
 - (4) The appeal shall lie to the Court of Appeals as provided in G.S. 7A-29. The procedure for the appeal shall be as provided by the rules of appellate procedure.
 - (5), (6) Repealed by Session Laws 1975, c. 391, s. 11.
 - (7) The Court of Appeals shall hear and determine all matters arising on such appeal, as in this Article provided, and may in the exercise of its discretion assign the hearing of said appeal to any panel of the Court of Appeals.
 - (8) Unless otherwise provided by the rules of appellate procedure, the cause on appeal from the Commissioner of Insurance shall be entitled "State of North Carolina ex rel. Commissioner of Insurance (here add any additional parties in support of the Commissioner's order and their capacity before the Commissioner). Appellee(s) v. (here insert name of appellant and his capacity before the Commissioner), Appellant." Appeals from the Insurance Commissioner pending in the superior courts on January 1, 1972, shall remain on the civil issue docket of such superior court and shall have priority over other civil actions. Appeals to the Court of Appeals under G.S. 7A-29 shall be docketed in accordance with the rules of appellate procedure.
 - (9) In any appeal to the Court of Appeals, the complainant in the original complaint before the Commissioner shall be a party to the record and each of the parties to the proceeding before the Commissioner shall have a right to appear and participate in said appeal.
 - (10) An appeal under this section shall operate as a stay of the Commissioner's order or decision until said appeal has been dismissed or the questions raised by the appeal determined according to law. (1971, c. 703, s. 3; 1975, c. 391, s. 11; 2009-566, s. 26.)

§ 58-2-90. Extent of review under § 58-2-80.

(a) On appeal the court shall review the record in accordance with the rules of the Court of Appeals, and any alleged irregularities in procedures before the Commissioner, not shown in the record, shall be considered under the rules of the Court of Appeals.

(b) So far as necessary to the decision and where presented, the court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning and applicability of the terms of any action of the Commissioner. The court may affirm or reverse the decision of the Commissioner, declare the same null and void, or remand the case for further proceedings; or it may reverse or modify the decision if the substantial rights of the

appellants have been prejudiced because the Commissioner's findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional provisions, or
 - (2) In excess of statutory authority or jurisdiction of the Commissioner, or
 - (3) Made upon unlawful proceedings, or
 - (4) Affected by other errors of law, or
 - (5) Unsupported by material and substantial evidence in view of the entire record as submitted, or
 - (6) Arbitrary or capricious.
- (c) In making the foregoing determinations, the court shall review the whole record or such portions thereof as may be cited by any party and due account shall be taken of the rule of prejudicial error.
- (d) The court shall also compel action of the Commissioner unlawfully withheld or unlawfully or unreasonably delayed.
- (e) Upon any appeal, the rates fixed or any rule, regulation, finding, determination, or order made by the Commissioner under the provisions of Articles 1 through 64 of this Chapter shall be prima facie correct. (1971, c. 703, s. 4; 2009-566, s. 27.)

§ 58-2-95. Commissioner to supervise local inspectors.

The Commissioner shall exercise general supervision over local investigators of fires and fire prevention inspectors. Whenever the Commissioner has reason to believe that the local inspectors are not doing their duty, he or his deputy shall make special trips of inspection and take proper steps to have all the provisions of the law relative to the investigation of fires and the prevention of fire waste enforced. (1905, c. 506, s. 6; Rev., s. 4690; C.S., s. 6270; 1925, c. 89; 1969, c. 1063, s. 2.)

§ 58-2-100. Office of Commissioner a public office; records, etc., subject to inspection.

The office of the Commissioner shall be a public office and the records, reports, books and papers thereof on file therein shall be accessible to the inspection of the public, except that the records compiled as a part of an investigation for the crime of arson, that of unlawful burning, or of fraud, shall not be considered as public records and may be made available to the public only upon an order of court of competent jurisdiction. Provided that such records shall upon request be made available to the district attorney of any district if the same concerns persons or investigations in his district. (1899, c. 54, ss. 9, 77; Rev., s. 4683; 1907, c. 1000, s. 1; C.S., s. 6271; 1945, c. 383; 1951, c. 781, s. 11; 1955, c. 456; 1973, c. 47, s. 2.)

§ 58-2-105. Confidentiality of medical and credentialing records.

(a) All patient medical records in the possession of the Department are confidential and are not public records pursuant to G.S. 58-2-100 or G.S. 132-1. As used in this section, "patient medical records" includes personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, and that has been obtained from the individual patient, a health care provider, or from the patient's spouse, parent, or legal guardian.

(b) Under Part 4 of Article 50 of this Chapter, the Department may disclose patient medical records to an independent review organization, and the organization shall maintain the confidentiality of those records as required by this section, except as allowed by G.S. 58-39-75 and G.S. 58-39-76.

(c) Under Part 4 of Article 50 of this Chapter, all information related to the credentialing of medical professionals that is in the possession of the Commissioner is confidential and is a public record neither under this section nor under Chapter 132 of the General Statutes. (1989 (Reg. Sess., 1990), c. 1021, s. 4; 1993 (Reg. Sess., 1994), c. 678, s. 3; 2001-446, s. 5(a); 2002-187, s. 3.4.)

§ 58-2-110. Original documents and certified copies as evidence.

Every certificate, assignment, or conveyance executed by the Commissioner, in pursuance of any authority conferred on him by law and sealed with his seal of office, may be used as evidence and may be recorded in the proper recording offices, in the same manner and with like effect as a deed regularly acknowledged or proved before an officer authorized by law to take the probate of deeds; and all copies of papers in the office of the Commissioner, certified by him and authenticated by his official seal, shall be evidence as the original. (1899, c. 54, s. 11; Rev., s. 4684; C.S., s. 6272.)

§ 58-2-115. Admissibility of certificate as evidence of agent's authority.

In any case or controversy arising in any court of original jurisdiction within this State wherein it is necessary to establish the question as to whether any insurance or other corporation or agent thereof is or has been licensed by the Department to do business in this State, the certificate of the Commissioner under the seal of his office shall be admissible in evidence as proof of such corporation or agent's authority as conferred by the Department. (1929, c. 289, s. 1; 1991, c. 720, ss. 4, 5.)

§ 58-2-120. Reports of Commissioner to the Governor and General Assembly.

The Commissioner shall, from time to time, report to the Governor and the General Assembly any change or changes that in the Commissioner's opinion should be made in the laws relating to insurance and other subjects pertaining to the Department. (1899, c. 54, ss. 6, 7, 10; 1901, c. 391, s. 2; Rev., ss. 4687, 4688; 1911, c. 211, s. 2; C.S., s. 6273; 1927, c. 217, s. 5; 1945, c. 383; 1999-219, s. 8.)

§ 58-2-121. Report of Department to General Assembly committees on various relief funds.

Beginning on April 1, 2016, and each year thereafter, the Department of Insurance shall report to the House Appropriations Subcommittee on General Government and the Senate Appropriations Committee on General Government and Information Technology the following information about each local firefighters' relief fund board, the North Carolina State Firefighters' Association, and the North Carolina Association of Rescue and Emergency Medical Services, Inc.:

- (1) The total amount of money disbursed from the relief funds controlled by each of the entities.
- (2) The amount of money spent by each entity for each of the statutorily permissible uses.
- (3) Each entity's ending fund balance.

The report also should describe any problems with data collection and quality and, if applicable, make recommendations on actions the General Assembly could take to resolve any data issues. (2014-64, s. 1(h); 2016-51, s. 6.)

§ 58-2-125. Authority over all insurance companies; no exemptions from license.

Every insurance company must be licensed and supervised by the Commissioner, and must pay all licenses, taxes, and fees as prescribed in the insurance laws of the State for the class of company, association, or order to which it belongs. No provision in any statute, public or private, may relieve any company, association, or order from the supervision prescribed for the class of companies, associations, or orders of like character, or release it from the payment of the licenses, taxes, and fees prescribed for companies, associations, and orders of the same class; and all such special provisions or exemptions are hereby repealed. It is unlawful for the Commissioner to grant or issue a license to any company, association, or order, or agent for them, claiming such exemption from supervision by his Department and release for the payment of license, fees, and taxes. (1903, c. 594, ss. 1, 2, 3; Rev., s. 4691; C.S., s. 6274; 1945, c. 383; 1991, c. 720, s. 4.)

§ 58-2-128. Interagency consultation.

(a) Purpose. – It is the stated intention of the Congress in P.L. 106-102, the Gramm-Leach-Bliley Act, that the Board of Governors of the Federal Reserve System, as the umbrella supervisor for financial holding companies, and the Commissioner, as the functional regulator of persons engaged in insurance activities, coordinate efforts to supervise persons that control both a depository institution and a person engaged in insurance activities regulated under State law. In particular, Congress believes that the Board and the Commissioner should share, on a confidential basis, information relevant to the supervision of persons that control both a depository institution and a person engaged in insurance activities, including information regarding the financial health of the consolidated organization and information regarding transactions and relationships between persons engaged in insurance activities and affiliated depository institutions. The purpose of this section is to encourage this coordination and confidential sharing of information and to thereby improve both the efficiency and the quality of the supervision of financial holding companies and their affiliated depository institutions and persons engaged in insurance activities.

(b) Commissioner's Authority. – Upon the request of the Board or the appropriate federal banking agency, the North Carolina Secretary of State, or the North Carolina Commissioner of Banks, the Commissioner may provide any examination or other reports, records, or other information to which the Commissioner has access with respect to a person that:

- (1) Is engaged in insurance activities and regulated by the Commissioner.
- (2) Is an affiliate of a depository institution or financial holding company.

Upon the request of the Board or the appropriate federal banking agency, the North Carolina Secretary of State, or the North Carolina Commissioner of Banks, the Commissioner may provide any examination or other reports, records, or other information to which the Commissioner has access with respect to any insurance producer.

(c) Privilege. – The provision of information or material under this section by the Commissioner does not constitute a waiver of, or otherwise affect, any privilege to which the information or material is otherwise subject.

(d) Definitions. – As used in this section, the terms:

- (1) "Appropriate federal banking agency" and "depository institution" have the same meanings as in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. § 1813.

- (2) "Board" and "financial holding company" have the same meanings as in section 2 of the Bank Holding Company Act of 1956, 12 U.S.C. § 1841, et seq.
- (3) "Insurance producer" or "producer" means a person required to be licensed under this Article to sell, solicit, or negotiate insurance. "Insurance producer" or "producer" includes an agent, a broker, and a limited representative. (2001-215, s. 1.)

§ 58-2-130: Repealed by Session Laws 1991, c. 681, s. 3.

§ 58-2-131. Examinations to be made; authority, scope, scheduling, and conduct of examinations.

(a) This section and G.S. 58-2-132 through G.S. 58-2-134 shall be known and may be cited as the Examination Law. The purpose of the Examination Law is to provide an effective and efficient system for examining the activities, operations, financial condition, and affairs of all persons transacting the business of insurance in this State and all persons otherwise subject to the Commissioner's jurisdiction; and to enable the Commissioner to use a flexible system of examinations that directs resources that are appropriate and necessary for the administration of the insurance statutes and rules of this State.

(b) As used in this section and G.S. 58-2-132 through G.S. 58-2-134, unless the context clearly indicates otherwise:

- (1) "Commissioner" includes an authorized representative or designee of the Commissioner.
- (2) "Examination" means an examination conducted under the Examination Law.
- (3) "Examiner" means any person authorized by the Commissioner to conduct an examination.
- (4) "Insurance regulator" means the official or agency of another jurisdiction that is responsible for the regulation of a foreign or alien insurer.
- (5) "Person" includes a trust or any affiliate of a person.

(c) Before licensing any person to write insurance in this State, the Commissioner shall be satisfied, by such examination and evidence as the Commissioner decides to make and require, that the person is otherwise duly qualified under the laws of this State to transact business in this State.

(d) The Commissioner may conduct an examination of any entity whenever the Commissioner deems it to be prudent for the protection of policyholders or the public, but shall at a minimum conduct a financial examination of every domestic insurer not less frequently than once every five years. In scheduling and determining the nature, scope, and frequency of examinations, the Commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent certified public accountants, and other criteria as set forth in the NAIC Examiners' Handbook.

(e) To complete an examination of any entity, the Commissioner may authorize an examination or investigation of any person, or the business of any person, insofar as the examination or investigation is necessary or material to the entity under examination.

(f) Instead of examining any foreign or alien insurer licensed in this State, the Commissioner may accept an examination report on that insurer prepared by the insurer's domiciliary insurance regulator. In making a determination to accept the domiciliary insurance

regulator's report, the Commissioner may consider whether (i) the insurance regulator was at the time of the examination accredited under NAIC Financial Regulation Standards and Accreditation Program, or (ii) the examination is performed under the supervision of an NAIC-accredited insurance regulator or with the participation of one or more examiners who are employed by the regulator and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by the regulator.

(g) If it appears that the insurer is of good financial and business standing and is solvent, and it is certified in writing and attested by the seal, if any, of the insurer's insurance regulator that it has been examined by the regulator in the manner prescribed by its laws, and was by the examination found to be in sound condition, that there is no reason to doubt its solvency, and that it is still permitted under the laws of such jurisdiction to do business therein, then, in the Commissioner's discretion, further examination may be dispensed with, and the obtained information and the furnished certificate may be accepted as sufficient evidence of the solvency of the insurer.

(h) Upon determining that an examination should be conducted, the Commissioner shall issue a notice of examination appointing one or more examiners to perform the examination and instructing them about the scope of the examination. In conducting the examination, an examiner shall observe the guidelines and procedures in the NAIC Examiners' Handbook. The Commissioner may also use such other guidelines or procedures as the Commissioner deems to be appropriate.

(i) Every person from whom information is sought and its officers, directors, and agents must provide to the Commissioner timely, convenient, and free access, at all reasonable hours at its offices, to all data relating to the property, assets, business, and affairs of the entity being examined. The officers, directors, employees, and agents of the entity must facilitate and aid in the examination. The refusal of any entity, by its officers, directors, employees, or agents, to submit to examination or to comply with any reasonable written request of the Commissioner or to knowingly or willfully make any false statement in regard to the examination or written request, is grounds for revocation, suspension, refusal, or nonrenewal of any license or authority held by the entity to engage in an insurance or other business subject to the Commissioner's jurisdiction.

(j) The Commissioner may issue subpoenas, administer oaths, and examine under oath any person about any matter pertinent to the examination. Upon the failure or refusal of any person to obey a subpoena, the Commissioner may petition the Superior Court of Wake County, and upon proper showing the Court may enter any order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the Court order is punishable as contempt of court.

(k) When making an examination, the Commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners. In the case of an examination of an insurer, the insurer shall bear the cost of retaining those persons.

(l) Pending, during, and after the examination of any entity, the Commissioner shall not make public the financial statement, findings, or examination report, or any report affecting the status or standing of the entity examined, until the entity examined has either accepted and approved the final examination report or has been given a reasonable opportunity to be heard on the report and to answer or rebut any statements or findings in the report. The hearing, if requested, shall be informal and private.

(m) Nothing in the Examination Law limits the Commissioner's authority to terminate or suspend any examination in order to pursue other legal or regulatory action under the laws and rules of this State and to use any final or preliminary examination report, any examiner or insurer work papers or other documents, or any other information discovered or developed during any examination in the furtherance of any legal or regulatory action that the Commissioner may consider to be appropriate. Findings of fact and conclusions made pursuant to any examination are prima facie evidence in any legal or regulator action. (1991, c. 681, s. 2; 1995, c. 360, s. 2(c); c. 517, s. 1; 1998-212, s. 26B(b), (c), (f); 2001-180, ss. 1, 2, 3; 2002-144, s. 6; 2002-187, ss. 2.1, 2.2; 2003-284, s. 22.2; 2004-124, s. 21.1.)

§ 58-2-132. Examination reports.

(a) All examination reports shall comprise only facts appearing upon the books, records, or other documents of the entity, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and conclusions and recommendations that the examiners find reasonably warranted from the facts.

(b) No later than 60 days following completion of an examination, the examiners shall file with the Department a verified written examination report under oath. Upon receipt of the verified report, the Department shall send the report to the entity examined, together with a notice that affords the entity examined a reasonable opportunity of not more than 30 days to make a written submission or rebuttal with respect to any matters contained in the examination report. Within 30 days after the date of the examination report, the entity examined shall file affidavits executed by each of its directors stating under oath that they have received and read a copy of the report.

(c) At the end of the 30 days provided for the receipt of written submissions or rebuttals, the Commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant parts of the examiners' work papers and enter an order:

- (1) Adopting the examination report as filed or with modifications or corrections. If the examination report reveals that the entity examined is operating in violation of any law, rule, or prior order of the Commissioner, the Commissioner may order the entity examined to take any action the Commissioner considers necessary and appropriate to cure the violation; or
- (2) Rejecting the examination report with directions to the examiners to reopen the examination to obtain additional data, documentation of the information, and refile under subdivision (1) of this subsection; or
- (3) Calling for an investigatory hearing with no less than 20 days' notice to the insurer for purposes of obtaining additional documentation, data, and testimony.

(d) All orders entered under subdivision (c)(1) of this section shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner work papers, and any written submissions or rebuttals. Any such order shall be considered a final administration decision and shall be served upon the entity examined by certified mail. Any hearing conducted under subdivision (c)(3) of this section shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies, or disputed issues apparent on the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant work papers or by the written submission or rebuttal of the entity examined. Within 20 days after the conclusion of any such hearing, the Commissioner shall enter an order under subdivision (c)(1) of this section.

The Commissioner may not appoint a member of the Department's examination staff as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the entity examined limited to the examiner's work papers that tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner may issue subpoenas for the attendance of any witnesses or the production of any documents the Commissioner considers to be relevant to the investigation, whether they are under the control of the Department, the entity examined, or other persons. The documents produced shall be included in the record, and testimony taken by the Commissioner shall be under oath and preserved for the record. Nothing in this section requires the Department to disclose any information or records that would show the existence or content of any investigation or activity of any federal or state criminal justice agency. In the hearing, the Commissioner shall question the persons subpoenaed. Thereafter the entity examined and the Department may present testimony relevant to the investigation. Cross-examination shall be conducted only by the Commissioner. The entity examined and the Department may make closing statements and may be represented by counsel of their choice.

(e) Upon completion of the examination report under subdivision (c)(1) of this section, the Commissioner shall hold the content of the examination report as private and confidential information for the 30-day period provided for written submissions or rebuttals. If after 30 days after the examination report has been submitted to it, the entity examined has neither notified the Commissioner of its acceptance and approval of the report nor requested to be heard on the report, the report shall then be filed as a public document and shall be open to public inspection, as long as no court of competent jurisdiction has stayed its publication. Nothing in the Examination Law prohibits the Commissioner from disclosing the content of the examination report, preliminary examination report or results, or any related matter, to an insurance regulator or to law enforcement officials of this or any other state or country or of the United States government at any time, as long as the person or agency receiving the report or related matters agrees in writing and is authorized by law to hold it confidential and in a manner consistent with this section. If the Commissioner determines that further regulatory action is appropriate as a result of any examination, the Commissioner may initiate such proceedings or actions as provided by law.

(f) All working papers, information, documents, and copies thereof produced by, obtained by, or disclosed to the Commissioner or any other person in connection with an examination, market analysis, market conduct action, or financial analysis shall be given confidential treatment, are not subject to subpoena, and shall not be made public by the Commissioner or any other person. The Commissioner may use the documents, materials, or other information in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(g) In order to assist in the performance of the Commissioner's duties, the Commissioner may:

- (1) Share documents, materials, or other information, including the confidential and privileged documents, materials, or information subject to subsection (f) of this section, with other state, federal, and international regulatory agencies, with the NAIC, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication, or other information.
- (2) Receive documents, materials, communications, or information, including otherwise confidential and privileged documents, materials, or information, from the NAIC, and from regulatory and law enforcement officials of other

foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material, or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material, or information.

- (3) Enter into agreements governing sharing and use of information consistent with this section.

(h) No waiver of an existing privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the Commissioner under this section or as a result of sharing as authorized in subsection (g) of this section.

(i) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this section shall be available and enforced in any proceeding in, and in any court of, this State.

(j) In this section, "department," "insurance regulator," "law enforcement official or authority," "NAIC," and "regulatory official or agency" include employees, agents, consultants, and contractors of those entities. (1991, c. 681, s. 2; 2001-180, s. 4; 2005-206, s. 2.)

§ 58-2-133. Conflict of interest; cost of examinations; immunity from liability.

(a) No person may be appointed as an examiner by the Commissioner if that person, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination. This section does not preclude an examiner from being:

- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner's residence to an insurer if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settler or beneficiary of a blind trust into which any otherwise nonpermissible holdings have been placed.

(b) Notwithstanding the requirements of G.S. 58-2-131, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though they may from time to time be similarly employed or retained by persons subject to examination under the Examination Law. In the case of an examination of an insurer, the insurer shall bear the cost of retaining those persons.

(c) The refusal of any insurer to submit to examination is grounds for the revocation, suspension, or refusal of a license. The Commissioner may make public any such revocation, suspension, or refusal of license and may give reasons for that action.

(d) The provisions of G.S. 58-2-160 apply to examinations conducted under the Examination Law. (1991, c. 681, s. 2; 1995, c. 360, s. 2(d); 2002-144, s. 7; 2003-284, s. 22.2; 2004-124, s. 21.1.)

§ 58-2-134. Cost of certain examinations.

(a) An insurer shall reimburse the State Treasurer for the actual expenses incurred by the Department in any examination of those records or assets conducted under G.S. 58-2-131, 58-2-132, or 58-2-133 under any of the following circumstances:

- (1) The insurer maintains part of its records or assets outside this State under G.S. 58-7-50 or G.S. 58-7-55 and the examination is of the records or assets outside this State.
- (2) The insurer requests an examination of its records or assets.
- (3) The Commissioner examines an insurer that is impaired or insolvent or is unlikely to be able to meet obligations with respect to known or anticipated claims or to pay other obligations in the normal course of business.
- (4) The examination involves analysis of the company's investment portfolio, a material portion of which comprises a sophisticated derivatives program, material holdings of collateralized mortgage obligations with high flux scores, unusual real estate or limited partnership holdings, high or unusual portfolio turnover, material asset movement between related parties, or unusual securities lending activities.

(b) The amount paid by an insurer for an examination of records or assets under this section shall not exceed one hundred thousand dollars (\$100,000), unless the insurer and the Commissioner agree on a higher amount. The State Treasurer shall deposit all funds received under this section in the Insurance Regulatory Fund established under G.S. 58-6-25. Funds received under this section shall be used by the Department for offsetting the actual expenses incurred by the Department for examinations under this section. (1998-212, s. 26B(d); 1999-435, s. 7; 2002-187, s. 2.3.)

§ 58-2-135: Repealed by Session Laws 1991, c. 681, s. 3.

§ 58-2-136. Insurer records sent to Department for examination; expenses.

(a) As used in this section, "records" means all data relating to the property, assets, business, and affairs of the insurer being examined.

(b) In addition to the Commissioner's authority in G.S. 58-2-185 through G.S. 58-2-200 to compel the production of records, in lieu of sending examiners to the location of an insurer's records to conduct an examination under the Examination Law, the Commissioner may require the insurer to send copies of its records to the Department. The chief executive or financial officer of the insurer shall certify under oath that the copies are true and accurate copies of the insurer's records. The insurer being examined shall pay all expenses associated with the examination. The insurer is not liable for the salaries and benefits of Department employees. The refusal by an insurer to pay for expenses under this subsection is grounds for the suspension, revocation, or refusal of a license.

(c) If the Commissioner sends examiners to the location of an insurer's records to conduct an examination under the Examination Law, the insurer shall pay for the travel and subsistence expenses and other administrative expenses associated with the examination. The insurer is not liable for the salaries and benefits of Department employees. The refusal by an insurer to pay for expenses under this subsection is grounds for the suspension, revocation, or refusal of a license. (2002-144, s. 8; 2003-284, s. 22.2; 2004-124, s. 21.1.)

§ 58-2-140: Repealed by Session Laws 1991, c. 681, s. 3.

§ 58-2-145: Repealed by Session Laws 1997-362, s. 7.

§ 58-2-150. Oath required for compliance with law.

Before issuing a license to any insurance company to transact the business of insurance in this State, the Commissioner shall require, in every case, in addition to the other requirements provided for by law, that the company file with the Commissioner the affidavit of its president or other chief officer that it accepts the terms and obligations of this Chapter as a part of the consideration of the license. (1899, c. 54, s. 110; 1901, c. 391, s. 8; Rev., s. 4693; C.S., s. 6276; 1991, c. 720, s. 4; 2004-199, s. 20(a); 2005-215, s. 1; 2006-105, s. 1.1.)

§ 58-2-155. Investigation of charges.

Upon his own motion or upon complaint being filed by a citizen of this State that a company authorized to do business in the State has violated any of the provisions of Articles 1 through 64 of this Chapter, the Commissioner shall investigate the matter, and, if necessary, examine, under oath, by himself or his accredited representatives the president and such other officer or agents of such companies as may be deemed proper; also all books, records, and papers of the same. In case the Commissioner shall find upon substantial evidence that any complaint against a company is justified, said company, in addition to such penalties as are imposed for violation of any of the provisions of Articles 1 through 64 of this Chapter, shall be liable for the expenses of the investigation, and the Commissioner shall promptly present said company with a statement of such expenses. If the company refuses or neglects to pay, the Commissioner is authorized to bring a civil action for the collection of these expenses. (1899, c. 54, s. 111; 1903, c. 438, s. 11; Rev., s. 4694; C.S., s. 6277; 1921, c. 136, s. 4; 1925, c. 275, s. 6; 1945, c. 383.)

§ 58-2-160. Reporting and investigation of insurance and reinsurance fraud and the financial condition of licensees; immunity from liability.

(a) As used in this section, "Commissioner" includes an employee, agent, or designee of the Commissioner. A person, or an employee or agent of that person, acting without actual malice, is not subject to civil liability for libel, slander, or any other cause of action by virtue of furnishing to the Commissioner under the requirements of law or at the direction of the Commissioner reports or other information relating to (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee. In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, task forces, delegates, and employees, and all other persons charged with the responsibility of collecting, reviewing, analyzing, or disseminating the information developed from filings of financial statements or examinations of licensees are not subject to civil liability for libel, slander, or any other cause of action by virtue of their collection, review, analysis, or dissemination of the data and information collected from such filings or examinations.

(b) The Commissioner, acting without actual malice, is not subject to civil liability for libel or slander by virtue of an investigation of (i) any known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee; or by virtue of the publication or dissemination of any official report related to any such investigation, which report is published or disseminated in the absence of fraud, bad faith, or actual malice on the part of the Commissioner. The Commissioner is not subject to civil liability in relation to the collecting, reviewing, analyzing, or dissemination of information that is developed by the NAIC from the filing of financial statements with the NAIC or from the examination of insurers by the NAIC and that is communicated to the Commissioner, including any investigation or publication or dissemination of any report or other information in relation thereto, which report is published or

disseminated in the absence of fraud, bad faith, negligence, or actual malice on the part of the Commissioner.

(c) During the course of an investigation of (i) a known or suspected fraudulent insurance or reinsurance claim, transaction, or act or (ii) the financial condition of any licensee, the Commissioner may request any person to furnish copies of any information relative to the (i) known or suspected claim, transaction, or act or (ii) financial condition of the licensee. The person shall release the information requested and cooperate with the Commissioner pursuant to this section. (1985 (Reg. Sess., 1986), c. 1013, s. 3; 1987, c. 864, s. 43; 1987 (Reg. Sess., 1988), c. 975, s. 3; 1989 (Reg. Sess., 1990), c. 1054, s. 1.)

§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

(a) For the purposes of this section:

(1) "Insurer" has the same meaning as in G.S. 58-1-5(3) and also includes:

- a. Any hull insurance and protection and indemnity club operating under Article 20 of this Chapter.
- b. Any surplus lines insurer operating under Article 21 of this Chapter.
- c. Any risk retention group or purchasing group operating under Article 22 of this Chapter.
- d. Any local government risk pool operating under Article 23 of this Chapter.
- e. Any risk-sharing plan operating under Article 42 of this Chapter.
- f. The North Carolina Insurance Underwriting Association operating under Article 45 of this Chapter.
- g. The North Carolina Joint Insurance Underwriting Association operating under Article 46 of this Chapter.
- h. The North Carolina Insurance Guaranty Association operating under Article 48 of this Chapter.
- i. Any multiple employer welfare arrangement operating under Article 49 of this Chapter.
- j. The North Carolina Life and Health Insurance Guaranty Association operating under Article 62 of this Chapter.
- k. Any service corporation operating under Article 65 of this Chapter.
- l. Any health maintenance organization operating under Article 67 of this Chapter.
- m. The State Health Plan for Teachers and State Employees and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes.
- n. A group of employers self-insuring their workers' compensation liabilities under Article 47 of this Chapter.
- o. An employer self-insuring its workers' compensation liabilities under Article 5 of Chapter 97 of the General Statutes.
- p. The North Carolina Self-Insurance Security Association under Article 4 of Chapter 97 of the General Statutes.
- q. Any reinsurer licensed or accredited under this Chapter.

(2) "Statement" includes any application, notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill

for services, diagnosis, prescription, hospital or doctor records, X rays, test result, or other evidence of loss, injury, or expense.

(b) Any person who, with the intent to injure, defraud, or deceive an insurer or insurance claimant:

- (1) Presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the claim, or
- (2) Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim is guilty of a Class H felony. Each claim shall be considered a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determination of the amount of restitution pursuant to G.S. 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim in the investigation of, and efforts to recover damages arising from, the claim, may be considered part of the damage caused by the defendant arising out of the offense.

In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant. The court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages. (1899, c. 54, s. 60; Rev., s. 3487; 1913, c. 89, s. 28; C.S., s. 4369; 1937, c. 248; 1967, c. 1088, s. 1; 1979, c. 760, s. 5; 1989 (Reg. Sess., 1990), c. 1054, s. 2; 1995, c. 43, s. 1; 1999-294, s. 3; 2005-400, s. 17; 2007-298, s. 8.1; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

§ 58-2-162. Embezzlement by insurance agents, brokers, or administrators.

If any insurance agent, broker, or administrator embezzles or fraudulently converts to his own use, or, with intent to use or embezzle, takes, secretes, or otherwise disposes of, or fraudulently withholds, appropriates, lends, invests, or otherwise uses or applies any money, negotiable instrument, or other consideration received by him in his performance as an agent, broker, or administrator, he shall be guilty of a felony. If the value of the money, negotiable instrument, or other consideration is one hundred thousand dollars (\$100,000) or more, violation of this section is a Class C felony. If the value of the money, negotiable instrument, or other consideration is less than one hundred thousand dollars (\$100,000), violation of this section is a Class H felony. (1889, c. 54, s. 103; Rev., s. 3489; 1911, c. 196, s. 8; C.S., s. 4274; 1989 (Reg. Sess., 1990), c. 1054, s. 2; 1997-443, s. 19.25(n).)

§ 58-2-163. Report to Commissioner.

Whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any other person has violated G.S. 58-2-161, 58-2-162, 58-2-164,

58-2-180, 58-8-1, 58-24-180(e), or whenever any insurance company, or employee or representative of such company, or any other person licensed or registered under Articles 1 through 67 of this Chapter knows or has reasonable cause to believe that any entity licensed by the Commissioner is financially impaired, it is the duty of such person, upon acquiring such knowledge, to notify the Commissioner and provide the Commissioner with a complete statement of all of the relevant facts and circumstances. Such report is a privileged communication, and when made without actual malice does not subject the person making the same to any liability whatsoever. The Commissioner may suspend, revoke, or refuse to renew the license of any licensee who willfully fails to comply with this section. (1945, c. 382; 1987, c. 752, s. 2; 1989 (Reg. Sess., 1990), c. 1054, s. 2; 2007-443, s. 4.)

§ 58-2-164. Rate evasion fraud; prevention programs.

(a) The following definitions apply in this section:

- (1) "Applicant" means one or more persons applying for the issuance or renewal of an auto insurance policy on which the person or persons will be a named insured.
- (2) "Auto insurance" means both nonfleet and other than nonfleet private passenger motor vehicle insurance.
- (3) "Eligible risk" means a person who is an eligible risk as defined in either G.S. 58-37-1(4) or G.S. 58-37-1(4a).
- (4) "Insurer" means an insurance company that is licensed to write and is writing auto insurance in this State.
- (5) "Nonfleet" means a motor vehicle as defined in G.S. 58-40-10(2).
- (5a) "Principal place of business" means the single physical location from which the majority of the essential operations of the applicant's business are directed and controlled. The location of a consultant, service agent, or attorney of the applicant shall not be sufficient to establish an applicant's principal place of business.
- (6) "Private passenger motor vehicle" means a motor vehicle as defined in G.S. 58-40-10(1).

(b) It shall be a Class 3 misdemeanor for any person who, with the intent to deceive an insurer, does any of the following:

- (1) Presents or causes to be presented a written or oral statement in support of an application for issuance of or amendment to a policy of auto insurance, knowing that the application contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.
- (2) Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer in connection with or in support of an application for issuance of or amendment to a policy of auto insurance, if the person knows that the statement contains false or misleading information that states the applicant is an eligible risk when the applicant is not an eligible risk.

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than one thousand dollars (\$1,000) for each violation.

(b1) It shall be a Class H felony for any applicant who, with the intent to deceive an insurer, knowingly violates G.S. 58-2-164(b) for the purpose of obtaining auto insurance

covering one or more vehicles, the operation of which requires a Commercial Drivers License pursuant to G.S. 20-4.01(3c).

In addition to any other penalties authorized by law, a violation of this subsection may be punishable by a fine of not more than ten thousand dollars (\$10,000) for each violation.

(c) The insurer and its agent shall also take reasonable steps to verify that the information provided by an applicant regarding the applicant's address and the place the motor vehicle is garaged is correct. The insurer may take its own reasonable steps to verify residency or eligible risk status or may rely upon the agent verification of residency or eligible risk status to meet the insurer's verification obligations under this section. The agent shall retain copies of any items obtained under this section as required under the record retention rules adopted by the Commissioner and in accordance with G.S. 58-2-185. The agent may satisfy the requirements of this section by obtaining from the applicant reliable proof of North Carolina residency and the applicant's status as an eligible risk.

(c1) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes one or more of the following:

- (1) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (2) A utility bill in the name of the applicant showing the applicant's current North Carolina address.
- (3) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (4) A receipt for personal property taxes paid by the applicant within the preceding 12-month period and showing the applicant's current North Carolina address.
- (5) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (6) Repealed by Session Laws 2016-78, s. 3.2(a), effective December 1, 2016.
- (7) A valid unexpired North Carolina driver's license issued to the applicant and showing the applicant's current North Carolina address.
- (8), (9) Repealed by Session Laws 2015-294, s. 13, effective January 1, 2016, and applicable to insurance policies entered into on or after that date.
- (10) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.
- (11) A valid military ID.
- (12) A valid student ID of the applicant for a North Carolina school or university.
- (13) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.
- (14) A homeowner's or renter's declarations page showing the applicant's current North Carolina address.

(c2) To the extent relevant to a particular criterion for eligible risk status and for the purpose of obtaining other than nonfleet private passenger motor vehicle insurance, reliable proof of North Carolina residency or eligible risk status includes two or more of the following:

- (1) A utility bill in the name of the applicant showing a North Carolina address for the principal place of business of the applicant.

- (2) A receipt for real property taxes paid by the applicant to a North Carolina locality within the preceding 12-month period and showing the applicant's current North Carolina address.
- (3) A valid North Carolina vehicle registration issued to the applicant and showing the applicant's current North Carolina address.
- (4) A federal Income Tax Return filed by the applicant for the most recent prior filing period showing the applicant's name and current North Carolina address.
- (5) The valid North Carolina driver's license of an owner of an applicant that is a corporation or an LLC, provided that the person holds at least twenty (20%) percent ownership interest in the applicant corporation or LLC.
- (6) If the principal place of business of a corporation or LLC is the primary residence of the sole owner, any of the documents identified in subdivisions (1) through (5) of this subsection, whether in the name of the corporation or LLC or in the name of the sole owner. For purposes of this subsection, "sole owner" shall mean an individual or a husband and wife.

For purposes of subdivisions (5) and (6) of this subsection, on policies to be ceded to the North Carolina Reinsurance Facility, proof of ownership is established through the execution by the owner of the corporation or LLC, of a form promulgated by the North Carolina Reinsurance Facility. The execution of this form shall constitute a written statement in support of an application for insurance or amendment to a policy of auto insurance under subsections (b) and (b1) of this section.

(d) In the absence of actual malice, neither an insurer, the authorized representative of the insurer, a producer, the Commissioner, an organization of which the Commissioner is a member, the North Carolina Reinsurance Facility, nor the respective employees and agents of such persons acting on behalf of such persons shall be subject to civil liability as a result of any statement or information provided or action taken pursuant to this section.

(e) In any action brought against a person that may have immunity under subsection (d) of this section for making any statement required by this section or for providing any information relating to any statement that may be requested by the Commissioner, the party bringing the action shall plead specifically in any allegation that subsection (d) of this section does not apply because the person making the statement or providing the information did so with actual malice. Subsections (d) and (e) of this section do not abrogate or modify any existing statutory or common law privileges or immunities.

(f) Every insurer shall maintain safeguards within its auto insurance business at the point of sale, renewal, and claim to identify misrepresentations by applicants regarding their addresses, their principal places of business, and the places their motor vehicles are garaged. Identified misrepresentations are subject to the requirements of Article 2 of this Chapter.

(g) If an applicant provides false or misleading information material to the applicant's or any named insured's status as an eligible risk and that fraudulent information makes the applicant or any named insured appear to be an eligible risk when that person is in fact not an eligible risk, the insurer may do any or all of the following:

- (1) Refuse to issue, amend, or endorse a policy.
- (2) Cancel or refuse to renew a policy that has been issued.

- (3) Deny coverage for any claim by the applicant for auto liability, comprehensive, or collision coverage. This subdivision does not apply to bodily injury or property damage claims of innocent third parties to the extent of any minimum financial responsibility requirement of State or federal law.

(g1) Any motor vehicle liability policy may provide that the insured shall reimburse the insurer for any payment made under a policy of insurance if the issuance of the policy was induced by a knowing and material misrepresentation of facts relating to the insured's status as an eligible risk. For purposes of this subsection, a payment made shall include any sums paid for satisfaction, in whole or in part, of any judgment against the insured or for a reasonable settlement of a claim against the insured for bodily injury or property damage. A payment made shall further include any costs or attorneys' fees incurred by the insurer in the adjustment, investigation, or defense of a claim.

(h) In a civil cause of action for recovery under subsection (g1) of this section, a conviction of the defendant for a violation of G.S. 58-2-164(b) or (b1) may be entered into evidence against the defendant and shall establish the liability of the defendant as a matter of law for damages, fees, or costs as may be proven. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages. (2007-443, s. 3; 2015-294, s. 13; 2016-78, s. 3.2(a); 2017-69, s. 2(c); 2018-120, s. 4.10.)

§ 58-2-165. Annual, semiannual, monthly, or quarterly statements to be filed with Commissioner.

(a) Except as provided in subsection (a1) of this section, every insurance company shall file in the Commissioner's office, on or before March 1 of each year, a statement showing the business standing and financial condition of the company, association, or order on the preceding December 31, signed and sworn to by the chief managing agent or officer thereof, before the Commissioner or some officer authorized by law to administer oaths. Provided, the Commissioner may, for good and sufficient cause shown by an applicant company, extend the filing date of the company's annual statement, for a reasonable period of time, not to exceed 30 days. In addition, except as provided in subsection (a1) of this section, the Commissioner may require any insurance company, association, or order to file its statement semiannually, quarterly, or monthly.

(a1) A town or county mutual, organized under G.S. 58-7-75(5)d., is required to file only an annual statement or an audited financial statement that was prepared by a certified public accountant if for the preceding year it had a direct written premium of less than one hundred fifty thousand dollars (\$150,000) and fewer than 400 policyholders. The Commissioner shall not require those mutuals to file statements semiannually, quarterly, or monthly.

(b) The Commissioner may require statements under this section and G.S. 58-2-190 to be filed in a format that can be read by electronic data processing equipment, provided that this subsection does not apply to an audited financial statement prepared by a certified public accountant that is submitted by a town or county mutual pursuant to subsection (a1) of this section.

(c) Except as provided herein, all statements filed under this section must be prepared in accordance with the appropriate NAIC Annual Statement Instructions Handbook and pursuant to the NAIC Accounting Practices and Procedures Manual and on the NAIC Model Financial Statement Blank, unless further modified by the Commissioner as the Commissioner considers to be appropriate. This subsection does not apply to statements filed by a town or county mutual organized under G.S. 58-7-75(5)d. if for the preceding year it had a direct written premium of less than one hundred fifty thousand dollars (\$150,000) and fewer than 400 policyholders. (1899, c. 54, ss. 72, 73, 83, 90, 97; 1901, c. 706, s. 2; 1903, c. 438, s. 9; Rev., s. 4698; C.S., s. 6280; 1945, c. 383; 1957, c. 407; 1985, c. 666, ss. 50, 51; 1985 (Reg. Sess., 1986), c. 1013, s. 11; 1991, c. 681, s. 7; 1993, c. 504, s. 1; 1998-211, s. 22; 1999-192, s. 1; 2015-92, s. 1.)

§ 58-2-170: Repealed by Session Laws 2015-92, s. 2, effective June 19, 2015.

§ 58-2-171. Qualifications of actuaries.

The Commissioner may adopt rules setting forth requisite qualifications of consulting actuaries for the sole purpose of qualifying them to certify financial statements filed and rate filings made by entities under this Chapter as to the actuarial validity of those filings. The qualifications shall be commensurate with the degree of complexity of the actuarial principles applicable to the various statements filed or rate filings made. Nothing in this section affects the scope of practice or the professional qualifications of actuaries. (1995, c. 517, s. 2.)

§ 58-2-175: Repealed by Session Laws 1993, c. 452, s. 65.

§ 58-2-180. Punishment for making false statement.

If any person in any financial or other statement required by this Chapter willfully misstates information, that person making oath to or subscribing the statement is guilty of a Class I felony; and the entity on whose behalf the person made the oath or subscribed the statement is subject to a fine imposed by the court of not less than two thousand dollars (\$2,000) nor more than ten thousand dollars (\$10,000). (1899, c. 54, s. 97; Rev., s. 3493; C.S., s. 6281; 1985, c. 666, s. 13; 1989 (Reg. Sess., 1990), c. 1054, s. 5; 1993 (Reg. Sess., 1994), c. 767, s. 23.)

§ 58-2-185. Record of business kept by companies and agents; Commissioner may inspect.

All companies, agents, or brokers doing any kind of insurance business in this State must make and keep a full and correct record of the business done by them, showing the number, date, term, amount insured, premiums, and the persons to whom issued, of every policy or certificate or renewal. Information from these records must be furnished to the Commissioner on demand, and the original books of records shall be open to the inspection of the Commissioner when demanded. (1899, c. 54, s. 108; 1903, c. 438, s. 11; Rev., s. 4696; C.S., s. 6284; 1945, c. 383; 1991, c. 720, s. 4.)

§ 58-2-190. Commissioner may require special reports.

The Commissioner may also address to any authorized insurer, statistical organization, joint underwriting or joint reinsurance organization, or the North Carolina Rate Bureau or Motor Vehicle Reinsurance Facility, or its officers any inquiry in relation to its transactions or condition

or any matter connected therewith. Every corporation or person so addressed shall reply in writing to the inquiry promptly and truthfully, and the reply shall be verified, if required by the Commissioner, by such individual, or by such officer or officers of a corporation, as he shall designate. (1945, c. 383; 1985 (Reg. Sess., 1986), c. 1027, s. 8; 2005-210, s. 1.)

§ 58-2-195. Commissioner may require records, reports, etc., for agencies, agents and others.

(a) The Commissioner is empowered to make and promulgate reasonable rules and regulations governing the recording and reporting of insurance business transactions by insurance agencies, agents, brokers and producers of record, any of which agencies, agents, brokers or producers of record are licensed in this State or are transacting insurance business in this State to the end that such records and reports will accurately and separately reflect the insurance business transactions of such agency, agent, broker or producer of record in this State. Information from records required to be kept pursuant to the provisions of this section must be furnished the Commissioner on demand and the original records required to be kept pursuant to the provisions of this section shall be open to the inspection for the Commissioner or any other authorized employee described in G.S. 58-2-25 when demanded.

(b) Every insurance agency transacting insurance business in this State shall at all times have appointed some person employed or associated with such agency who shall have the responsibility of seeing that such records and reports as are required pursuant to the provisions of this section are kept and maintained.

(c) Any person subject to the provisions of subsection (a) of this section who violates the provisions of this section or the rules and regulations prescribed by the Commissioner pursuant to the provisions of this section may after notice and hearing: for the first offense have his license or licenses (in case license be issued for more than one company in such person's case) suspended or revoked for not less than one month nor more than six months and for the second offense shall have his license or licenses (in case license be issued from more than one company in his case) suspended or revoked for the period of one year and such person shall not thereafter be licensed for one year from the date said revocation or suspension first became effective.

(d) For the purpose of enforcing the provisions of this section the Commissioner or any other authorized employee described in G.S. 58-2-25 is authorized and empowered to examine persons, administer oaths and require production of papers and records relative to this section.

(e) Whenever the Commissioner deems it to be prudent for the protection of policyholders in this State, he or any other authorized employee described in G.S. 58-2-25 shall visit and examine any insurance agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record. The refusal of any agency, agent, broker, adjuster, motor vehicle damage appraiser, or producer of record to submit to examination is grounds for the revocation or refusal of a license. (1971, c. 948, s. 1; 1987, c. 629, ss. 14, 15; c. 752, s. 1; 1995, c. 360, s. 2(e).)

§ 58-2-200. Books and papers required to be exhibited.

It is the duty of any person having in his possession or control any books, accounts, or papers of any company licensed under Articles 1 through 64 of this Chapter, to exhibit the same to the Commissioner or to any deputy, actuary, accountant, or persons acting with or for the Commissioner. Any person who shall refuse, on demand, to exhibit the books, accounts, or papers, as above provided, or who shall knowingly or willfully make any false statement in regard to the same, shall be subject to suspension or revocation of his license under Articles 1 through 64 of this Chapter; and shall be deemed guilty of a Class 1 misdemeanor. (1899, c. 54, s. 76; Rev., ss. 3494,

4697; 1907, c. 1000, s. 3; C.S., s. 6286; 1945, c. 383; 1985 (Reg. Sess., 1986), c. 1013, s. 6; 1991, c. 720, s. 4; 1993, c. 539, s. 445; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 58-2-205. CPA audits of financial statements.

The Commissioner may adopt rules to provide for audits and opinions of insurers' financial statements by certified public accountants. These rules shall be substantially similar to the NAIC model rule that requires audited financial reports, as amended. The Commissioner may adopt, amend, or repeal provisions of these rules under G.S. 150B-21.1 in order to keep these rules current with the NAIC model rule. (1989, c. 485, s. 38; 1998-212, s. 26B(g).)

§ 58-2-210. Rules for mortgage insurance consolidations.

The Commissioner is authorized to adopt rules governing mortgage insurance consolidations and related rules concerning unfair rate discrimination. In the event the Commissioner adopts such rules, while such rules are in effect the unfair rate discrimination provisions of G.S. 58-58-35 and G.S. 58-63-15(7) will not apply to mortgage insurance consolidations to the extent those provisions are inconsistent with such rules. For purposes of this section, "mortgage insurance consolidation" means any transaction in which a mortgage loan servicer makes its premium collection services available to mortgage debtors in connection with an insurer's offer of mortgage insurance, which offer is made to debtors who, immediately prior to the offer, had mortgage insurance with another insurer and were paying premiums for that insurance with their monthly mortgage payments. (1989, c. 341, s. 1.)

§ 58-2-215. Consumer Protection Fund.

(a) A special fund is created in the Office of the State Treasurer, to be known as the Department of Insurance Consumer Protection Fund. The Fund shall be placed in an interest bearing account and any interest or other income derived from the Fund shall be credited to the Fund. Moneys in the Fund shall only be spent pursuant to warrants drawn by the Commissioner on the Fund through the State Treasurer. The Fund shall be subject to the provisions of the Executive Budget Act; except that the provisions of Article 3C of Chapter 143 of the General Statutes do not apply to subdivision (b)(1) of this section.

(b) All moneys credited to the Fund shall be used only to pay the following expenses incurred by the Department:

- (1) For the purpose of retaining outside actuarial and economic consultants, legal counsel, and court reporting services in the review and analysis of rate filings and any other insurance regulatory matters, in conducting all hearings, and through any final adjudication.
- (2) In connection with any delinquency proceeding under Article 30 of this Chapter, for the purpose of locating and recovering the assets of or any other obligations or liabilities owed to or due an insurer that has been placed under such proceeding.
- (3) In connection with any civil litigation, other than under Chapter 150B of the General Statutes or any appeal from an order of the Commissioner or his deputies, that is commenced against the Commissioner or his deputies and that arises out of the performance of their official duties, for the purpose of retaining outside consultants, legal counsel, and court reporting services to defend such litigation.

(c) Moneys appropriated by the General Assembly shall be deposited in the Fund and shall become a part of the base budget of the Department of Insurance. Such base budget amount shall equal the actual expenditures drawn from the Fund during the prior fiscal year plus the official inflation rate designated by the Director of the Budget in the preparation of the State Budget for each ensuing fiscal year; provided that if interest income on the Fund exceeds the amount yielded by the application of the official inflation rate, such base budget amount shall be the actual expenditures drawn from the Fund. In the event the amount in the Fund exceeds two hundred fifty thousand dollars (\$250,000) at the end of any fiscal year, such excess shall revert to the General Fund.

(d) Repealed by Session Laws 1996, c. 507, s. 11A(a), (b). (1989 (Reg. Sess., 1990), c. 1069, s. 22; 1993 (Reg. Sess., 1994), c. 769, s. 14.1; 1995, c. 507, s. 11A(a), (b), (c); 2005-215, s. 21; 2012-142, s. 20.2; 2013-360, s. 20.1; 2014-100, s. 6.4(d).)

§ 58-2-220. Insurance Regulatory Information System and similar program test data not public records.

Except as provided in G.S. 58-4-25, financial test ratios, data, or information generated by the Commissioner pursuant to the NAIC Insurance Regulatory Information System, any successor program, or any similar program developed by the Commissioner, are not public records and are not subject to Chapter 132 of the General Statutes or G.S. 58-2-100. (1985 (Reg. Sess., 1986), c. 1013, s. 9; 1989 (Reg. Sess., 1990), c. 1021, s. 7; 1991, c. 681, s. 14.)

§ 58-2-225: Repealed by Session Laws 1995, c. 193, s. 8.

§ 58-2-230. Commissioner to share information with Department of Labor.

The Commissioner shall provide or cause to be provided to the Department of Labor, on an annual basis, the name and business address of every employer that is self-insured for workers' compensation. Information provided or caused to be provided by the Commissioner to the Department of Labor under this section is confidential and not open for public inspection under G.S. 132-6. (1991 (Reg. Sess., 1992), c. 894, s. 5.)

§ 58-2-235: Expired.

§ 58-2-240. Market conduct analysis, financial analysis, and related information not public record.

(a) Notwithstanding Chapter 132 of the General Statutes, all market analysis, documents arising from market conduct action, and financial statement analysis work papers are confidential, are not open for public inspection, and are not discoverable or admissible in evidence in a civil action brought by a party other than the Department against a person regulated by the Department, its directors, officers, or employees, unless the court finds that the interests of justice require that the documents be discoverable or admissible in evidence or except as provided in G.S. 58-2-128 and G.S. 58-2-132(g) through (j). The Commissioner, however, may use market analysis, documents arising from market conduct action, and financial statement analysis work papers in the furtherance of any regulatory or legal action brought as part of the Commissioner's official duties.

(b) As used in this Article:

- (1) "Financial statement analysis" means a set of systems and procedures designed to provide relevant information derived from basic sources of data for the purpose of evaluating the risk of an insurer's insolvency.
- (1a) "Financial statement analysis work papers" means:
 - a. Documents, programs, findings, and other information produced by persons employed or contracted by the Commissioner during and as part of the financial statement analysis of an insurer.
 - b. Documents, programs, findings, and other information disclosed by an entity to persons employed or contracted by the Commissioner in response to an inquiry from the Commissioner during and as part of the financial statement analysis of the insurer.
 - c. Documents, programs, findings, and other information obtained, during and as part of the financial statement analysis of an insurer, by persons employed or contracted by the Commissioner from or through any regulatory or law enforcement agency or the NAIC when the receipt of that information is conditioned upon the Commissioner maintaining the confidentiality of the information shared with the Commissioner.

"Financial statement analysis work papers" includes financial analysis programs and procedures; correspondence between persons employed or contracted by the Commissioner and the insurer during and as part of the financial statement analysis; memos, e-mails, and other correspondence, in any form, produced by persons employed or contracted by the Commissioner detailing findings or recommendations of the financial statement analysis; and the Actuarial Opinion Summary filed by an insurer as required by and in accordance with NAIC Annual Statement Instructions. "Financial statement analysis work papers" does not mean statements filed with the Commissioner under G.S. 58-2-165, CPA audit reports filed with the Commissioner under G.S. 58-2-205, or documents that constitute an initial filing and any supplemental filing necessary to complete a filing made by an insurer, independent of financial statement analysis.
- (1b) "Market analysis" means work product arising from a process whereby persons employed or contracted by the Commissioner collect and analyze information from filed schedules, surveys, required reports other than periodic reports specifically required by statute, and other sources in order to develop a baseline understanding of the marketplace and to identify patterns or practices of insurers that deviate significantly from the norm or that may pose a potential risk to the insurance consumer.
- (2) "Market conduct action" means any of the full range of activities, other than an examination that the Commissioner may initiate to assess and address the market practices of insurers, beginning with market analysis. Additional market conduct actions, including those taken subsequent to market analysis as a result of the findings of or indications from market analysis include: correspondence with an insurer; insurer interviews; information gathering; policy and procedure reviews; interrogatories; and review of insurer self-evaluation and compliance programs, including membership in a best-practice organization. The Commissioner's activities to resolve an individual consumer complaint or other

report of a specific instance of misconduct are not market conduct actions for purposes of this section.

(c) For purposes of subdivisions (b)(1) and (b)(1a) of this section only, the term "insurer" has the same meaning as in G.S. 58-30-10(14) and includes a:

- (1) Reciprocal that is or should be licensed under Article 15 of this Chapter.
- (2) Local government risk pool that chooses to operate under Article 23 of this Chapter.
- (3) Fraternal benefit society that is or should be licensed under Article 24 of this Chapter.
- (4) Self-insurer that is or should be licensed under Article 5 of Chapter 97 of the General Statutes.

(d) Nothing in this section limits public access to financial or actuarial information or calculations filed by an insurer or other entity for rating purposes, including rate filings, deviation filings, and loss cost filings. (2005-206, s. 1; 2006-105, s. 2.4; 2007-127, s. 10.)

§ 58-2-245. Access to employer taxpayer identification numbers contained in public documents.

Notwithstanding G.S. 132-1.10(b)(5), the Department is not required to redact an employer taxpayer identification number on documents that may be made available to the general public. (2006-105, s. 2.5.)

§ 58-2-250. Electronic filings.

(a) As used in this section:

- (1) "Commissioner's designee" includes the National Insurance Producer Registry of the NAIC.
- (2) "License" includes any license, certificate, registration, or permit issued under this Chapter.
- (3) "Licensee" means any person who holds a license.

(b) Notwithstanding any other provision of this Chapter, the Commissioner may adopt rules that require an applicant for a license or a licensee to file documents electronically with the Commissioner or the Commissioner's designee. The rules adopted under this section may contain procedures for the electronic payment of any fee required under this Chapter and the electronic filing of documents, including:

- (1) Any document required as part of an application for a license under this Chapter.
- (2) Any document required to be filed by an applicant for a license or a licensee to maintain the license in good standing.
- (3) Any other document required or permitted to be filed.

(c) The Commissioner or the Commissioner's designee may charge an administrative fee for electronic filing. Fees charged for the processing of an electronic filing are in addition to any other fee imposed for the filing. Fees charged for an electronic filing are limited to the actual cost of the electronic transaction.

(d) This section does not supersede any other provision of law that requires the electronic filing of a document or requires an applicant for a license or a licensee to make any other filing electronically. (2009-383, s. 2.)

§ 58-2-255. Electronic insurance communications and records.

(a) Definitions. – As used in this section:

- (1) "Communications" means notices, offers, disclosures, documents, forms, information, and correspondence required or permitted to be provided to a party in writing under the insurance laws of this State or that are otherwise provided by an insurer, including, but not limited to, notices pertaining to the cancellation, termination, or nonrenewal of insurance.
- (2) "Delivered by electronic means" includes any of the following:
 - a. Delivery to an electronic mail address or an electronic account at which a party has consented to receive electronic communications.
 - b. Displaying information, or a link to information, as an essential step to completing the transaction to which such information relates.
 - c. Providing notice to a party at the electronic mail address or an electronic account at which the party has consented to receive notice of the posting of a communication on an electronic network or site.
- (3) "Insurer" has the same meaning as in G.S. 58-1-5(3).
- (4) "Party" means a recipient of any communications defined in this section. "Party" includes an applicant, policyholder, insured, claimant, member, provider, or beneficiary.

(b) When any insurance law of this State requires a communication to be provided to a party in writing, signed by a party, provided by means of a specific delivery method, or retained by an insurer, those requirements are satisfied if the insurer complies with Article 40 of Chapter 66 of the General Statutes.

(c) Verification of communications delivered by electronic means shall constitute proof of mailing in civil and administrative proceedings and under the insurance laws of this State.

(d) Nothing in this section affects requirements related to the content or timing of any communication required under the insurance laws of this State.

(e) A recording of an oral communication between an insurer and a party that is reliably stored and reproduced by an insurer shall constitute an electronic communication or record. When a communication is required under the insurance laws of this State to be provided in writing, the communication provided in accordance with this subsection shall satisfy the requirement that the communication be in writing. When a communication is required under the insurance laws of this State to be signed, a recorded oral communication in which a party agrees to the terms stated in the oral communication shall satisfy the requirement. (2013-413, s. 13(b); 2017-150, s. 2.)